The Honorable Marshall Ferguson
Hearing Date: Tuesday, November 26, 2019 at 9:00 a.m.
With Oral Argument

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

GARFIELD COUNTY TRANSPORTATION AUTHORITY; KING COUNTY; CITY OF SEATTLE; WASHINGTON STATE TRANSIT ASSOCIATION; ASSOCIATION OF WASHINGTON CITIES; PORT OF SEATTLE; INTERCITY TRANSIT; AMALGAMATED TRANSIT UNION LEGISLATIVE COUNCIL OF WASHINGTON; and MICHAEL ROGERS, Plaintiffs, v. STATE OF WASHINGTON, Defendant.	NO. 19-2-30171-6 SEA ORDER GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

THIS MATTER came before the Court on November 26, 2019 to consider Plaintiffs' Motion for a Preliminary Injunction. In addition to the pleadings, papers, and records on file in this matter, the Court heard oral argument from the parties and considered declarations, with attached exhibits, from the following persons: Rob Gannon (original and supplemental), Dwight Dively, John Taylor, Kathryn Terry, David Hennes, Ken Canete, Chloe Wilkes, Khieng Lo, Rachel VerBoort, Justin Leighton, Peter King, Geraldine H. Poor, Justin Dixon, Ann Freeman Manzanares, Michael Rogers, Matthew J. Segal (original and supplemental), Tracy Butler, Rick

JUDGE MARSHALL FERGUSON
KING COUNTY SUPERIOR COURT
516 THIRD AVENUE
SEATTLE WA 98104
(206) 477-1513

Swartz, George Price, Alan Copsey, Jaime Grantham, and Jill Johnson. Pursuant to Civil Rule 65(d), the Court hereby makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. In the General Election on November 5, 2019, Washington voters approved Initiative Measure No. 976 ("I-976") with 52.97 percent of the votes cast. By operation of law, nearly all provisions in I-976 are to take effect on December 5, 2019.

2. Plaintiffs include the Garfield County Transportation Authority ("GCTA," a transit authority operating in a primarily rural area of eastern Washington), Intercity Transit (a municipal corporation operating transit services in and around Thurston and Pierce counties), the City of Seattle, the Port of Seattle, King County, the Amalgamated Transit Union Legislative Council of Washington, the Washington State Transit Association, the Association of Washington Cities, and Michael Rogers, an individual Washington taxpayer with cerebral palsy who relies heavily upon paratransit and transit services, especially those provided by Plaintiff Intercity Transit and by non-party Sound Transit. Plaintiffs contend that they each would be harmed, directly and indirectly, if I-976 were to take effect on December 5, 2019 and be thereafter implemented during the pendency of this case.

3. If I-976 takes effect on December 5, 2019 and is thereafter implemented, such acts will result in the following immediate, irreparable harms to Plaintiffs:

a. King County Metro would reduce transit service by 110,000 hours as a result of revenue cuts forced by I-976. After December 9, 2019, such reductions would be permanent for the March 2020 service change date and the lost service could not be restored until September 2020 at the earliest. The reduction in Metro service hours would be the equivalent of full-time work for 82 Metro employees. The lost service hours for customers and the employment income for Metro workers could be neither

JUDGE MARSHALL FERGUSON
KING COUNTY SUPERIOR COURT
516 THIRD AVENUE
SEATTLE WA 98104
(206) 477-1513

recovered nor retroactively repaid at the next service change date. Metro could not use other funding to pay for the lost service hours. Moreover, King County Metro would stand to lose up to $2 million in federal grant funding (which is based in part upon the number of service hours provided) as a direct result of the 110,000-hour service reduction. The service cuts would also substantially impact service for Metro customers, including more crowded buses and longer waits. *See* Declaration and Supplemental Declaration of Rob Gannon.

b. In December 2019, the City of Seattle would lose $2.68 million in vehicle license fee ("VLF") revenue if I-976 were to take effect on December 5, 2019. In 2020, the City of Seattle would lose $32,813,672. *See* Declaration of David Hennes. The revenue lost during the pendency of this case could not be recovered later if I-976 were ultimately found to be unconstitutional. The City of Seattle uses VLF revenue to fund or partially fund, among other things, King County Metro transit routes, neighborhood traffic control, roadway maintenance, pothole repairs, and ORCA transit card access programs. *See* Declarations of Khieng Lo and Rachel Verboort.

c. Funding to the State's Multimodal Transportation Account ("Multimodal Account") would be significantly reduced. Reductions would commence immediately when I-976 takes effect. The Multimodal Account funds public transit, rail, bicycle, and pedestrian projects statewide via direct allocation to cities and counties, and through grants including the Special Needs Transportation Grant, the Rural Mobility Grant, and the Regional Mobility Grant. Gannon Decl., ¶ 11; Taylor Decl., ¶ 9 and Exhibit B to the Declaration of Peter King, pp. 2-3. Plaintiffs GCTA, Intercity Transit, King County, and the City of Seattle all rely upon money from the Multimodal Account to fund assorted transportation projects and services, as do numerous non-party

JUDGE MARSHALL FERGUSON
KING COUNTY SUPERIOR COURT
516 THIRD AVENUE
SEATTLE WA 98104
(206) 477-1513

municipalities statewide. *See* Declarations of Dixon, Freeman-Manzanares, Gannon, Taylor, Canete, and Wilkes. If I-976 were to take effect on December 5, 2019, then, depending upon how the Washington Legislature thereafter decided which programs or grants to fund with the remaining Multimodal Account revenue, one or more of the municipal Plaintiffs would be forced to reduce or eliminate programs or services funded by the Multimodal Account. Cuts would likely include critical programs relied upon by special needs, transit-dependent taxpayers like Plaintiff Rogers. *See* Declarations of Rogers, Freeman-Manzanares. Because the Legislature has not yet made any "fund or cut" decisions stemming from Multimodal Account reductions, it is not yet possible for the municipal Plaintiffs to prove which of their respective programs would be cut as a result of I-976. In the Court's view, however, the question is not whether Multimodal Account program cuts would cause any immediate, irreparable harm to Plaintiffs, but rather which of the Plaintiffs would bear such harm.

4. On the other hand, as noted above, a majority of voters statewide approved I-976 and now justifiably expect that I-976 will reduce or eliminate many vehicle-related fees and taxes. If the Court stays implementation of I-976, then Washington residents, many of whom would pay considerably less under I-976, will continue to pay existing vehicle fees and taxes for months or years while this case wends its way not only through this court, but likely the Washington Supreme Court as well.

5. If Defendant State of Washington ultimately prevails in this case, then Washington residents' overpayments of vehicle-related fees and taxes during the pendency of this case can be refunded. The State would incur significant time and expense reviewing, preparing, and issuing the refunds.

JUDGE MARSHALL FERGUSON
KING COUNTY SUPERIOR COURT
516 THIRD AVENUE
SEATTLE WA 98104
(206) 477-1513

CONCLUSIONS OF LAW

1. A plaintiff is entitled to a preliminary injunction when: (a) it has a clear legal or equitable right, (b) it has a well-grounded fear of immediate invasion of that right, and (c) the acts it is complaining of have or may result in actual and substantial injury.

2. Plaintiffs have demonstrated that they possess a clear legal and equitable right because they are likely to prevail on the merits of their constitutional challenge to I-976 based upon Article II, Section 19 of the Washington Constitution, specifically the "subject-in-title" requirement. Plaintiffs have raised substantial concerns as to whether I-976's ballot title is misleading. The ballot title states that "voter-approved charges" are excepted from the $30 limit on motor vehicle license fees, but Section 2 of I-976 indicates that only charges approved by voters *after the effective date of I-976* are excepted from the $30 limit. In other words, all existing voter approved charges are apparently extinguished by I-976, even though the ballot title suggests that all voter approved charges, past or future, survive I-976. This Court does not herein conclude that I-976 violates the subject-in-title requirement, nor is it a foregone conclusion that this Court will reach that final conclusion in these proceedings. Indeed, the Court still presumes, as it must, that I-976 is constitutional unless and until Plaintiffs have established its unconstitutionality beyond a reasonable doubt. Plaintiffs have not yet done so. Furthermore, there exist plausible arguments supporting the conclusion that I-976 does not violate the subject-in-title rule and there may be additional arguments not yet presented to the Court on that issue. But at this point, Plaintiffs have sufficiently shown that they are likely to prevail as to the issue. As such, Plaintiffs possess a clear legal and equitable right to prevent implementation and enforcement of I-976.

3. Plaintiffs have a well-grounded fear of immediate invasion of the rights afforded by the Washington Constitution due to implementation of I-976. Implementation on December

JUDGE MARSHALL FERGUSON
KING COUNTY SUPERIOR COURT
516 THIRD AVENUE
SEATTLE WA 98104
(206) 477-1513

5, 2019 of an unconstitutionally misleading statewide initiative, even if approved by a majority of voters, would be an invasion *per se* of Plaintiffs' rights under the Washington Constitution. Put simply, enforcement of what is likely an unconstitutional law would invade Plaintiffs' constitutional rights.

4. As detailed in the above Findings of Fact, implementation of I-976 on December 5, 2019 will result in actual and substantial injury to Plaintiffs.

5. In balancing the equities, interests, and the relative harms to the parties and the public, the Court concludes that the harms to Plaintiffs resulting from the implementation of I-976 outweigh the harms faced by Defendant State of Washington and the public if implementation of I-976 is stayed. If the collection of vehicle license fees and taxes stops on December 5, 2019, there will be no way to retroactively collect those revenues if, at the conclusion of this case, the Court concludes that I-976 is unconstitutional and permanently enjoins its enforcement. Conversely, refunds of fees and taxes impacted by I-976 can be issued if the State ultimately prevails in this matter, albeit at some expense to the State. The Court acknowledges that a majority of Washington voters approved I-976 and that many of those voters ardently and perhaps desperately desire relief from vehicle related taxes and fees. Nonetheless, the continued collection of fees and taxes during the pendency of this case is the only way to prevent the above-described harms to Plaintiffs should this Court ultimately determine that I-976 is unconstitutional. Moreover, it is highly probable that, regardless how this Court rules on the constitutionality of I-976, one party or another will seek direct review by the Washington Supreme Court. As such, the relevant time period to evaluate and balance the respective harms to the parties is not merely the one or two months beyond December 5, 2019 that it might take for this Court to consider all parties' motions and issue a final ruling on I-976's constitutionality. Rather, the relevant time period is the months or potentially years that it could take for all issues

JUDGE MARSHALL FERGUSON
KING COUNTY SUPERIOR COURT
516 THIRD AVENUE
SEATTLE WA 98104
(206) 477-1513

in the case to be addressed though appellate review. If I-976 were to be implemented over those months or years, then all Plaintiffs, including members of groups such as Plaintiffs Association of Washington Cities and the Washington State Transit Association, would eventually, inevitably be forced to cut a wide array of programs and services due to reductions in fee/tax revenue stemming from I-976.[1] *See, e.g.*, King Decl., ¶¶ 7-16; Leighton Decl, ¶¶ 7-15. If I-976 were ultimately found to be unconstitutional, the long-term hardships endured by Washingtonians whose lifeline transportation services were cut for those many months or years, whose transportation-related work hours were reduced or eliminated completely, and whose transportation projects were unfinished or never started, could not be retroactively mitigated. The balance of equities weighs heavily in favor of granting injunctive relief.

PRELIMINARY INJUNCTION

Given the above findings of fact and conclusions of law, it is hereby

ORDERED, ADJUDGED, AND DECREED that Plaintiffs' Motion For a Preliminary Injunction is GRANTED. It is further

ORDERED, ADJUDGED, AND DECREED that the effective date of I-976 is STAYED pending further order of this Court. While this stay is in effect, Defendant State of Washington, its officials, employees, agents, and all persons in active concert or participation with Defendant, are enjoined from implementing or enforcing I-976. Defendant shall continue to collect all fees, taxes, and other charges that would be subject to or impacted by I-976 were it not stayed, and shall distribute those funds to local municipalities and political subdivisions as appropriate pursuant to existing laws, regulations, contracts, obligations, policies, and procedures. Any municipality or political subdivision that accepts such funds while this Order is in effect,

[1] Even if the relevant time period is limited to the estimated one or two months of pendency before this Court, several of the Plaintiffs would nonetheless sustain immediate, irreparable harm, as set forth in the Findings of Fact above.

JUDGE MARSHALL FERGUSON
KING COUNTY SUPERIOR COURT
516 THIRD AVENUE
SEATTLE WA 98104
(206) 477-1513

including those that are not parties to this lawsuit, do so subject to the likelihood that refunds of overpayments may be required should the State ultimately prevail in this action.

Per CR 65(c), Plaintiffs are not required to provide a bond or other security as a condition of this preliminary injunction.

ORDER FOR CONFERENCE OF COUNSEL

The parties' counsel are instructed to confer regarding a proposed schedule for future motions, briefing, and hearings. Although it is presently unclear to the Court whether one or more motions to intervene will be properly brought in the near future, the Court encourages counsel for the existing parties and intervenors' counsel of record to confer regarding scheduling issues if practicable. By **12:00 p.m. on Thursday, December 5, 2019**, the parties should provide the Court with either an agreed proposed scheduling order or their own proposed scheduling orders for future motions, briefing, and hearings. Counsel should also confer with the bailiff for the undersigned judge regarding the Court's future hearing date availability.

DATED this 27th day of November, 2019.

JUDGE MARSHALL FERGUSON

JUDGE MARSHALL FERGUSON
KING COUNTY SUPERIOR COURT
516 THIRD AVENUE
SEATTLE WA 98104
(206) 477-1513